First Principles.

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Lawsuits Against Red Squads

EDITOR'S NOTE

This month's FIRST PRINCIPLES has been put together to accompany the Conference Against Police Spying, held in Chicago on January 20-23, 1977.

We print three brief articles dealing with red squad lawsuits. These suits differ in their defendants—the SWP is suing present and former federal officials, the Chicago cases are against officials of both federal and local police agencies, and the Michigan suit is against the state and local police. But what they have in common is that they are all against "law enforcement" agencies and officials for surveilling, disrupting, and harassing people and organizations who were exercising rights which are protected by the First Amendment, and can serve as models for new suits in other jurisdictions. Such litigation fulfills several functions. Even in the beginning of litigation, suits can uncover a wealth of documentation about what these government agencies have been doing, and to whom. At the end, important points of law can be established stemming from the principle that even government agencies which style themselves as "intelligence" operations must obey the law.

We also print, on page 11, a docket of all the red squad and government surveillance cases that we know about. If there are any that we've missed or new ones being filed, we would appreciate being kept posted. Our In the Courts column in future issues of FIRST PRINCIPLES will keep you up to date on these suits.

It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to first principles.

THOMAS PAINE

The Socialist Workers Party Lawsuit

BY CLAIRE MORIARTY

Ms. Moriarty, who has been active in the anti-war and women's movements, is currently a staff member of the Political Rights Defense Fund.

Government officials never intended to make public the FBI's routine political burglaries. They never intended to reveal the CIA's break-ins against Americans living abroad. They never thought they'd have to disclose FBI files on its informers. Because what the government least expected was to have to answer to one of its victims.

But on July 18, 1973, the Socialist Workers Party and the Young Socialist Alliance filed a $27-million-dollar damage suit in federal court.* With a team of lawyers headed by Leonard Boudin, the socialists are seeking an injunction against burglary, mail tampering, wiretapping, the use of informers, and harassment.

A central issue underlying the SWP suit is whether citizens can effectively use the courts to prevent these kinds of tactics from being used against legitimate political organizations, engaged in no violent activities.

By December of 1974 Federal Judge Thomas P. Griesa was prepared to state that the government had shown no evidence of crimes or violent activity by the SWP or YSA. He ordered the FBI not to spy on an upcoming convention of the YSA, but on appeal, Supreme Court Justice Thurgood Marshall allowed the FBI to send its informers to the convention. Marshall rejected, however, the government's argument that the socialists had no standing to sue and said that the underlying constitutional issues should be settled in a trial.

The record of SWP's non-violence has been reaffirmed in every forum where the question has been brought up. When SWP presidential candidate Peter Camejo testified before the House Intelligence (Pike) Committee, the FBI had its chance to make its case. W. Raymond Wannall, in charge of the FBI's intelligence division, told the Pike Committee that members of the SWP were on the "Administrative Index," an index of individual considered dangerous to national security. A lawyer for the committee then asked Wannall if the SWP "engaged in any violent activities or advocated any violent activities."

Wannall's reply: "Not violent."

The Pike Committee went on to conclude that the SWP is "a legitimate American political party" and the FBI "investigation" of the party is based largely on the Smith Act, which was held unconstitutional except where violence is not merely advocated but imminent.

Discovery in the SWP Suit — Unearthing Official Lawbreaking

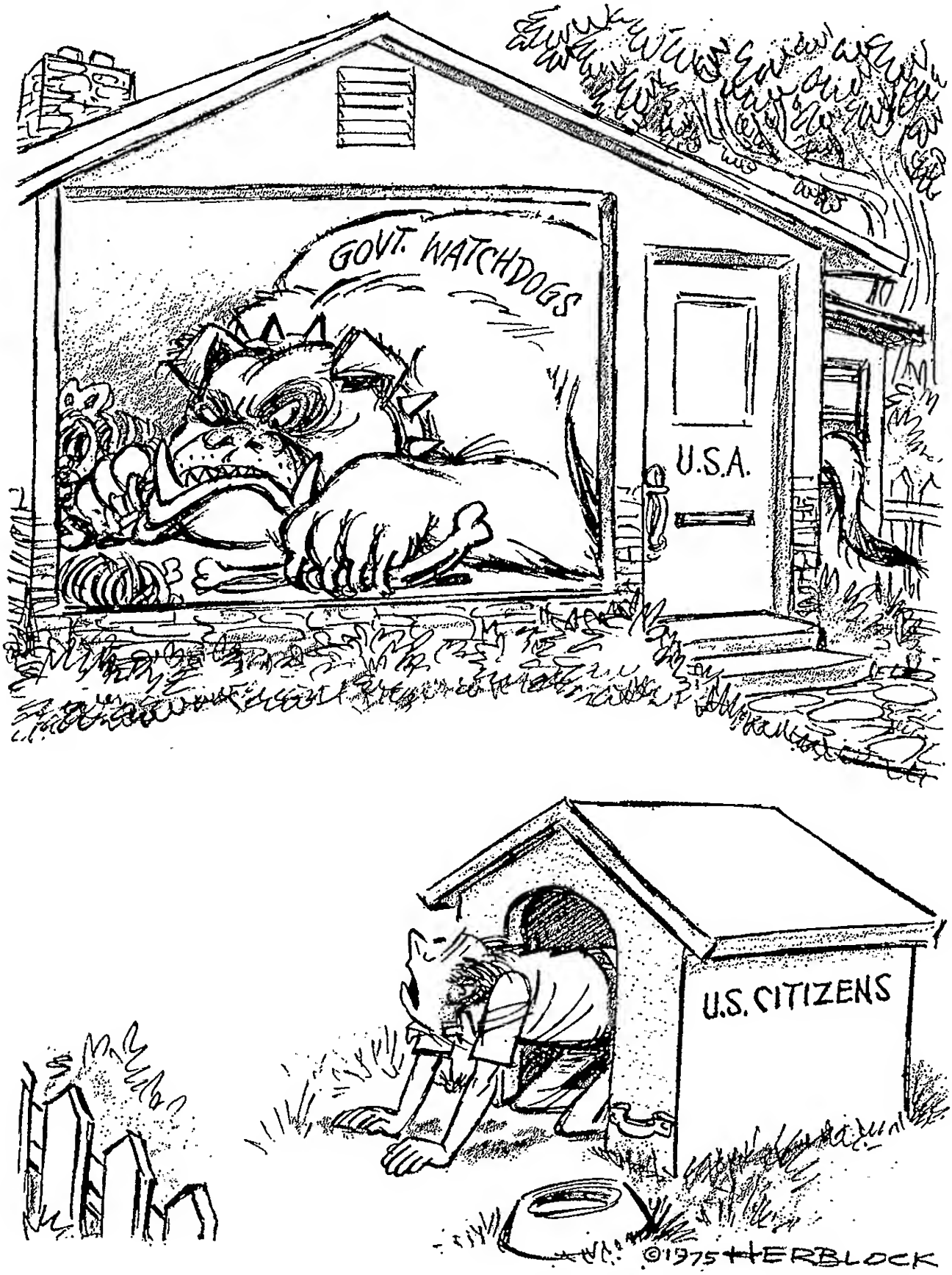
Only a few months after the suit was filed the government responded with some startling admissions—and what turned out to be some even more startling lies. In its answer to the complaint, the government lied about mail tampering, lied about the character of the now-famous "counterintelligence program," and lied about burglaries.

In January 1974 Judge Griesa ordered the government to turn over all its files on the two socialist groups. Within one month documents unearthed by the suit exposed an FBI poison-pen campaign to get a socialist professor fired. The campaign was part of COINTELPRO, the FBI's secret "counter-intelligence program," designed—by the government's admission—"to expose, disrupt, misdirect, discredit, or otherwise neutralize" political activists whose ideas the FBI doesn't like.

Since then tens of thousands of pages of FBI documents have been made public by the SWP. They uncovered FBI efforts to disrupt the antiwar movement and brought to light evidence that the CIA's domestic

*Socialist Workers Party v. Attorney General, 73 Civ. 3160 (S.D.N.Y.). People interested in additional reading about the SWP suit and recent revelations should refer to the September 1976 issue of FIRST PRINCIPLES. (To order back issues of FP, please use the order blank on page 15.)

"Something went wrong here"



spying was more extensive and continued longer than the Rockefeller commission had claimed.

While FBI Director Clarence Kelley made some admissions about FBI burglaries in the summer of 1975, it became clear in March 1976 that government officials had deliberately misled congressional committees. In an avalanche of files released by the FBI, under the judge's order in the SWP suit, burglaries emerged as a routine practice of the Bureau. Between 1960 and 1966, for example, agents of the FBI burglarized the offices of the SWP at least 94 times—an average of once every three weeks.

The FBI responded to the disclosure with counteraccusations. According to public statements, the Bureau feared that party members "might gain responsible positions not only in Government but in industry and education." It was the same justification they had used for the allegedly defunct COINTELPRO operation.

In April 1976 there was a slip-up. As a result of a request under the Freedom of Information Act, FBI documents were provided to SWP 1968 presidential candidate Fred Halstead. These showed that his briefcase, stolen during the campaign, had mysteriously turned up in FBI hands one month after the theft.

This inadvertent admission made at least one thing clear: thousands of pages of FBI files remained to be released and the odds were that they contained a Pandora's box of illegal FBI activities. Since then the FBI has admitted that it has eight million pages of files on the SWP.

The SWP suit is responsible for the discovery of FBI files about recent burglaries of many organizations, despite FBI assertions that the practice ended ten years ago. And that disclosure has led to the nationwide investigation of the FBI by the Justice Department.

Although still in the pretrial discovery stage, the suit is clearly making an impact. The *New York Times* recently editorialized, "The Socialist Workers Party lawsuit is prying out of the F.B.I. files information that was in existence but was withheld from both of the [congressional] committees expressly charged with investigating intelligence abuses" (July 2, 1976).

Informers and the Bill of Rights

The role of informers is one of the most serious issues raised in the SWP suit. While there are laws against government wiretapping, there are no laws protecting citizens from government informers and the Supreme Court has in the past held that the Fourth Amendment does not protect individuals from having bad judgment about their friends, i.e.; paid informers. The government claims the right to pay informers to infiltrate, burglarize, and harass legal political organizations. In clear violation of the rights of free speech and association guaranteed by the Bill of Rights, paid informers actually join the organizations they disrupt, take part in meetings, speak out on issues, and vote on policy; government informers have even been known to run as candidates of the organizations they are pledged to disrupt.

Informers have been used to disrupt the Black Panther Party and set up police murders of its members; to interfere with the legal defense of framed-up members of the American Indian Movement; to collaborate with ultra-right gangs to beat up anti-Vietnam war demonstrators; to illegally interfere with trade-union elections and policy; and to burglarize offices of the SWP and the homes of its members and supporters.

In July 1976 there was a dramatic new development. An FBI informer broke into the Denver SWP office and stole several cartons of party documents. FBI officials accepted the stolen material and then reported the burglary only after the informer's arrest on a nonpolitical burglary charge raised the danger that he might "blow his cover" to the Denver police.

In the wake of these events, for the first time in history the FBI was ordered to release the complete files on one of its informers, the Denver burglar. The 2,000 pages that appeared showed that the FBI orchestrated a coverup of the burglary and that the informer had committed at least four other burglaries of socialists' homes and offices—for which he was paid by the FBI and rated "excellent" by FBI inspectors.

Judge Griesa accused the FBI of deliberately giving "false information" about the activities of the Denver burglar. A grand jury indicted the informer-burglar but unfortunately did nothing to his FBI "control agent" or any of the FBI officials who had taken part in the coverup.

Of the informers the government admits having used to spy on the SWP and YSA since 1960, the socialists have selected a sample of 19 and moved in court for disclosure of their files as a prelude to full disclosure of all informer files. The FBI was forced to acknowledge that as of August 1976 it had 66 informers posing as members of the SWP. It has also admitted that it has used almost 1,000 informers who were not members of the SWP to collect information on the party.

An End to Government Operations Against the SWP?

For several months the FBI has been announcing reorganizations of itself in an attempt to silence criticism of its role as a domestic political police.

Most recently the Justice Department has ordered the FBI to call off its 38-year "investigation" of the party, a clear admission of nearly four decades of wrongdoing. The FBI claims to have discontinued the use of informers against the SWP.

However, if the Justice Department directive means anything, the FBI must turn over the eight million pages of files they've collected on the socialists.

So far there has been no uncensored disclosure of FBI documents and there is no evidence of the departure of the 66 informers.

Over Justice Department objections, Judge Griesa ordered Kelley to answer questions under oath from the Socialist Workers Party. Forced to retreat further, Kelley testified on November 1st that FBI agents had been ordered to instruct the 66 informers posing as socialists to resign their membership from the SWP and YSA and that if agents were offered informa-

tion about the party, "they must refuse to accept it."

However, the fact that Kelley testified in the same deposition that he'd never been told the details of burglaries conducted after 1966—that in fact he'd never sought such information from either his own staff or the Justice Department officials conducting the criminal investigation of the burglaries—does not inspire confidence.

In the Justice Department memo ordering Kelley to terminate the "investigation" of the SWP, there is a go-ahead to the CIA to take up spying on organizations like the SWP because of their contact with socialists in other countries. Attorney General Levi refused on that spurious basis, for example, to end the FBI's campaign against the Communist Party despite his acknowledgement that the CP has broken no laws. The simple fact is that it is not and should not be a crime to have any relationship of a political nature with people around the world. Unions do it, churches do it, and socialists should be able to do it, too.

In the coming months the CIA's activities will be a very important issue in the case. The CIA has admitted burglarizing and wiretapping members of the SWP overseas—not as part of the discontinued Operation CHAOS but as part of their ongoing "foreign intelligence" activities. Obviously this raises the question of what is legal for the CIA to do to American citizens when they are outside the borders of the United States. The CIA claims that we are all fair game.

Conclusion

Of course, the plaintiffs in any civil liberties action against the government are as unequally matched as a small businessman suing IBM for patent infringements. The Socialist Workers Party suit is a strong challenge to government crime for two reasons.

First, the SWP has the evidence. With pretrial discovery far from complete, the suit has already yielded more than 100,000 pages of incriminating government files. There is documented proof of government spying, burglaries, poison-pen letters, agent "visits" to landlords, employers, and relatives, disruption, and the illegal use of informers. Outstanding discovery motions exist against every federal spy agency. (Because of the government's reluctance to comply with some discovery orders, the trial is now at least nine months off and may not take place in 1977.)

Second, the SWP's lawsuit is being reinforced by national and international support. The Political Rights Defense Fund, a nonpartisan, ad hoc civil liberties organization, has set itself the task of raising funds for the legal expenses of the suit and publicizing the issues at stake. ■

Litigation Against Intelligence Operations of Local Police and Federal Agencies in Chicago

BY ROBERT C. HOWARD

Litigation against government spying in Chicago began more than six years ago and has reached a peak in the last two years. It presently revolves around two major class actions[1]—the *ACLU*[2] and *Alliance To End Repression*[3] cases—and the *Fred Hampton/Black Panther*[4] civil rights damage action. Other lawsuits, a long-running newspaper expose, and a grand jury investigation have made key contributions.

Exposure of municipal spying, largely carried on through the City of Chicago's Police Security Section, is already very advanced and its impact continues to grow. Revelations of spying activity by federal agencies have so far largely emerged from the *Hampton* case, but will hopefully be developed on a class basis through the *ACLU* case in the coming year. The *ACLU* and *Alliance* cases, consolidated for discovery[5] before a receptive federal judge, are moving through an extensive discovery process that has generated hundreds of thousands of pages of documents (with permission to disseminate those to the respective class members). There have also

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been key favorable rulings on a limited preliminary injunction, the informer privilege, reverse discovery, and sanctions against the defendants for destruction of documents and incomplete responses to discovery.

For orderly presentation, this article will review the events chronologically, noting significant legal or factual developments as they have occurred. The *Hampton/Panther* case will not be reviewed in detail, since it has been reported in the November 1976 issue of First Principles.

In 1971, a newly-formed coalition, the Alliance To End Repression, began to accumulate and document the experiences of political groups with the Chicago Police Security Section in preparation for litigation. Years later, it was learned through discovery that at the commencement of the Alliance's efforts, the police had infiltrated at least two undercover policemen and a full-time informer into the Alliance's Surveillance Task Force, where they participated in (and reported in detail on) the legal and factual preparations. It was later learned in discovery, for example, that when the informers reported in late 1973 that the filing of the suit was imminent, massive "destruction" of red squad documents began. Hundreds of volumes of spy data, as well as files identifying the Security Section's informers, were purportedly incinerated.

The *Alliance* case was filed in November 1974, framed as a class action against the Chicago Police Department and Mayor Daley, on behalf of all victims of municipal spying. The filing of the case sparked a disclosure by an undercover policeman that he had worked as a covert informer for many years in Operation PUSH. (The commencement of litigation, discovery later revealed, also touched off another massive round of document "destruction" by the Security Section.)

Early in 1975, two major contributions to the exposure of municipal spying emerged from a successful lawsuit against police employment discrimination that had been proceeding for several years under the leadership of the Afro-American Patrolmen's League, and in which one of the *Alliance* counsel represented intervening women plaintiffs.[6] Through that case, the *Alliance* attorney secured documentation that full-time police undercover agents had been planted in several community organizations, including the Alliance, Operation PUSH, the Organization for a Better Austin, and the Citizens Action Program. These agents often worked their way up to the executive board level; one of the undercover agents had even become president of OBA, a strong community organization that promptly went into sharp decline.

Also in the police discrimination case, one of the allegations was of harassment of the League by the Chicago Police Intelligence Division, and in February 1975 Judge Prentice Marshall ordered that all the League's spy files, aggregating several thousand pages, be turned over to them without any deletions and without any protective order. Since the discovery order included many spy reports on other organizations in which the League was merely mentioned, the files provided broad-based documentation of political intelligence gathering against a range of political, civic and community groups, all conducted without any law enforcement justification.

The simultaneous disclosure of the Alliance's documentation of informers and the Patrolmen's League files became the basis for a massive *Chicago Daily News* expose, beginning in March 1975, of municipal spying. The disclosures also prompted a Cook County grand jury investigation, which ended six months later, unfortunately without indictments, but with a report that sharply criticized the police but did not provide specific information.[7] However, the newspaper expose and grand jury inquiry together served to expand public awareness enormously and to flush out many facts and sources of information which the litigation has been able to utilize. One of the most significant sets of facts concern the Legion of Justice, a right-wing paramilitary operation that functioned in close coordination with the Security Section and military intelligence from 1969-71; with police approval, the Legion burglarized, assaulted and harassed political groups, particularly the Socialist Workers Party and Young Socialist Alliance.

Although the municipal spying scandal was in full flower in the news media, the *Alliance* case itself was proceeding slowly through the preliminary stages of litigation. Motions to dismiss were defeated in May 1975, but the discovery process that ensued was limited to the 33 named plaintiffs and bogged down in massive deletions from the documents justified by claims of the informer privilege. Even the limited fruits of discovery were hidden by a tight protective order that allowed only the plaintiffs' counsel to examine the documents.

In September 1975 the second major class action, *ACLU v. City of Chicago*, was filed. This case confronts not only municipal spying and the domestic intelligence activities of the FBI and of military intelligence, but also the interrelationships among all of these agencies, which legally amounts to a conspiracy to deprive civil rights.

The filing of the *ACLU* case caused that and the *Alliance* case to be transferred to federal Judge Alfred Y. Kirkland, a downstate Republican without ties to the Daley organization or to federal intelligence agencies. Eventually the two cases were consolidated for discovery and have proceeded in parallel, jointly representing the class of municipal spying victims, with the *ACLU* case representing the class of federal spying victims.[8]

Discovery

Before Judge Kirkland the cases began to move much more rapidly. In March 1976 three important rulings in the *Alliance* case opened the door to comprehensive discovery. First, the class of all municipal spying victims was certified.[9] Second, the City was ordered to produce, without any deletions, all documents concerning the 33 *Alliance* named plaintiffs. A key element in this discovery order was the ruling that the informer privilege did not apply, in part because some of the informers were paid rather than volunteers and in part because the informer privilege finds its justification in criminal law enforcement whereas Security Section activities were alleged to be addressed to non-criminal, First Amendment activity. The third significant ruling was an order closing the door on reverse discovery attempts by the City; its extensive interrogatories had sought political and associational data and were rejected by Judge Kirkland on the ground that the information was not relevant to the issues in the lawsuit and that the in-

terrogatories were an attempt to carry out the spying function through the discovery process.

Soon after, in May 1976, the motions to dismiss were denied and the municipal/federal class certified in the *ACLU* case. This led to the initiation of a series of pre-trial conferences, held approximately monthly, through which discovery issues are discussed informally between the Court and counsel, with resulting rulings and agreements reflected in pre-trial orders. This process has proved enormously useful in cutting through the defendant's resistance to discovery and in avoiding distracting and time-consuming briefing schedules. Very broad-scale class discovery under efficient logistical arrangements has been accomplished through the pre-trial conferences, and maximum pressure has been maintained on the defendants to respond to discovery deadlines.

Class discovery[10] was commenced by an order for the production of the index card system to the Security Section files. 112,510 index cards have been photocopied, providing a reasonably comprehensive method of access to the contents of the files. The index cards have made it possible (subject to the limitations of purged cards and inefficient record-keeping) to determine at the outset of discovery the practical scope of the class and the nature of the political information on file about any particular class member. Production of the index cards also laid the foundation for widespread dissemination of surveillance information to the class (see below).

The next step in class discovery (which the defendants were still resisting vigorously) was to designate several hundred names of organizations and individuals and secure a court order for the production of all files relating to those persons. The purpose of this step was to provide complete document discovery on a small sample of the class.

Pursuant to a March 1975 court order against document destruction, the Superintendent of Police had impounded the Intelligence Division files under 24-hour guard and segregated in a storage room apart from normal Intelligence Division operations. We were therefore able to secure court permission for an inspection and inventory of the file room, so that our subsequent discovery requests could be based on a knowledge of what was available rather than on speculation. These inspections of the file room have graduated into full-scale, item-by-item examination of all documents in the file room, and from there to the breakdown of the City's remaining objections to complete class discovery. We are now able to make repeated visits to the file room, examine documents there, and designate any documents for photocopying. The court is considering a plaintiffs' proposal to designate the file room as a document depository under joint custody, which would eliminate the last remaining logistical difficulties in access, examination and photocopying of the documents.

All of the above steps in initiating, expanding and solidifying class discovery were carried out through the pre-trial conferences with Judge Kirkland, without the necessity of traditional, time-consuming procedures of requests/objection/briefing schedule/decision. This process has enabled us to gain a firm grasp on the basic documents within six months, whereas the process might have taken several times as long by traditional discovery procedures.

Protective Orders

Attention was then turned to the protective order question. A prior judge had imposed a gag order restricting the documents to plaintiffs' counsel only. We argued, and even the defendants had to admit, that trial preparation could not be carried out under that restriction. Plaintiffs proposed categorizing the documents in two groups: "personal" documents, which are the political data gathered about the class members, and "system" documents, which are the documents defining spying techniques and administrative procedures. The Court agreed that the only interest affecting personal documents was the privacy interest of the subjects, and therefore the documents should be disseminated to them and further dissemination to third persons or to the public should be at the discretion of each subject. The only restriction on dissemination of personal data is that one class member may not publicly disseminate the name of any other class member, except with that member's consent.

With respect to system data, the argument revolved around whether defendants' intelligence methods would be compromised by disclosure. The Court's resolution was that dissemination should be restricted only as to acquisition methods, and not as to procedures for information retention, use or destruction. However, after the order protecting intelligence acquisition methods was entered, the Superintendent of Police publicly defended the use of informers and denied the use of wiretaps or burglaries. This enabled us to request modification of the protective order to eliminate restrictions concerning acquisition methods, and we hope the court will do so in the near future.

Through the protective order modifications summarized above, we have been able to disseminate information to the public on a widespread basis, including the following:

- We are able to disseminate index cards or documents to any class member, and through them or with their consent we are able to disseminate those documents to the news media and the public. This has been a major asset for public education and building community support.
- We have been able to inform the public about the massive purported destruction of documents by the Police Department and about the criteria for purging. Naturally, those criteria merely served to confirm that information was gathered on an indiscriminate and unjustified basis in the past.
- We have also been able to reveal that the contents of the political files were disseminated by the Intelligence Division for many non-law enforcement purposes. For example, all applicants for federal employment were routinely screened by the U.S. Civil Service Commission through the Security Section files for political background checks, and the same was done by the City of Chicago.

Substantive Rulings

The most recent development with respect to the city defendants has been that substantive rulings have begun to emerge from the discovery process. One ruling of major significance was an opinion issued in November

1976 in which Judge Kirkland condemned the infiltration of the Alliance To End Repression litigation team and enjoined any further activity of that nature. This ruling serves as a forerunner, we hope, of general preliminary injunctive relief to be requested in 1977. (A notice of appeal of this injunction, which we welcome, was filed in mid December of 1976).

In another November 1976 opinion, Judge Kirkland held that the defendants' failure to answer interrogatories (which the City justified on the ground that the documents had been destroyed) concerning informer activity and dissemination of political data outside the Police Department constituted "evasive or incomplete" answers under the Federal Rules. As a sanction for the insufficient answers, Judge Kirkland ordered that the allegations of the complaint concerning those issues be deemed established *prima facie* at the trial, that the defendants have the burden of proving that informer (including provocateur) and dissemination activities did not occur, and that the City may not use as evidence any of the documents which it claims were destroyed.

Conclusion

In summary, we have a comprehensive class discovery process under way, a pre-trial conference procedure established that minimizes time-consuming briefing schedules, minimal protective order problems, and significant rulings beginning to emerge from the discovery process. These developments have been directed thus far, for the most part, at the City defendants, since litigation on that level was initiated first. We are hopeful that our success on this level can be translated into similar success in discovery from the FBI and Military Intelligence defendants. Their responses to massive interrogatories were due in late December 1976.

FOOTNOTES

1. A class action is a lawsuit in which plaintiffs who are named on the court papers also seek to establish that they represent a broader group of people; one case can then represent literally thousands of people. For a discussion of class action suits, see the May 1976 issue of FIRST PRINCIPLES. (To order back issues of FP, please use the order blank on page 15).

2. American Civil Liberties Union, *et al.*, v. City of Chicago, *et al.*, No. 75 C 3295 (N.D. Ill.) Chief counsel for the ACLU case are Robert J. Vollen of Business and Professional People for the Public Interest and Robert C. Howard of the Better Government Association.

3. Alliance to End Repression v. Rochford, 407 F. Supp. 115 (N.D. Ill. 1975). Chief counsel for the Alliance case is Richard M. Gutman of Citizens Alert.

4. Hampton v. Hanrahan, No. 70 C 1384 (N.D. Ill.). See 484 F.2d 602 (7th Cir. 1973).

5. Discovery is the process whereby a court order gives one side in a suit access to evidence which the other side has in its possession.

6. The Afro-American Patrolman's League litigation consists of four consolidated cases—U.S. v. City of Chicago, Robinson v. Conlisk, etc. See, for example, 385 F. Supp. 529; 385 F. Supp. 540, 385 F. Supp. 543, and 395 F. Supp. 329 (all N.D. Ill.).

7. The Cook County Grand Jury Report is reprinted in full in the January 1976 issue of FIRST PRINCIPLES. (Use order blank on page 15.)

8. There have also been several other cases filed, two of which survive. One is a non-class injunction suit by the Lawyers Committee for Civil Rights, which is now also consolidated for discovery. The second is an SWP/YSA damage suit, which is before another judge. There has been no discovery in either case.

9. When a class is certified, the court has accepted the contention of the named plaintiffs that they represent a broader class of people. See FIRST PRINCIPLES, May 1976 (Use order blank on page 15).

10. Class discovery means identifying all the members of the class of victims of illegal Intelligence Division activities. In a situation where the police have kept their activities secret, this is obviously extremely important and confirms for the first time who these people are.

Litigation in a State Court: Benkert v. Michigan State Police

BY LARRY HOCHMAN

Mr. Hochman, a former Physics professor and current law student, presently works for the Civil Rights Enforcement Agency of Wayne County.

On July 24, 1974, a consumer's group, Michigan Association for Consumer Protection (MACP), filed suit against the Michigan State Police in Wayne County Circuit Court in connection with political surveillance and intelligence-gathering against MACP which had been initiated at the request of a Michigan legislator.

The suit, *Benkert v. Michigan State Police*, Wayne County Circuit Court #74-023-934-AZ, demanded a declaratory judgment that certain Michigan statutes were unconstitutional, an injunction against continued police intrusion, and destruction of the intelligence files assembled on members of the narrow class of persons and organizations investigated by the State Police at the request of state legislators. Damages were not requested.

A First Amended Complaint was filed on April 8, 1975. Several additional persons and organizations were added as plaintiffs and the Detroit Police Department was added as a party defendant. A new class was proposed, consisting of all those who were subjected to political (non-criminal) police surveillance, not merely those so subjected at the urging of legislators. Relief sought included *inspection* and then public destruction of the files, as well as an injunction against further surveillance activity and use of the fruits thereof. As to

defendant State Police, which claimed to be acting pursuant to statutory authority, a judgment was sought declaring the statutes unconstitutional. Since the defendant Detroit Police claimed that it was not acting on the basis of statute but pursuant to a claimed inherent common law police power to do surveillance, plaintiffs sought a declaration that the Detroit mandate, from whatever source derived, was unconstitutional.

Discovery in a Class Action Suit

The discovery process began in April, 1975, mainly through depositions. The Court ordered the City to produce and permit the copying of the dossiers on the *listed* plaintiffs. The named plaintiffs, and only those, did receive their files under a separate court order not to divulge to anyone "third party names" — the names of other surveillance subjects contained therein. The order on the City was silent on the question of deletions and the material released by the City contained no deletions of "third parties" or regular police personnel. Police informants, however, were not identified but listed by code number. Pursuant to a subsequent order, the State defendant, too, produced the files on the named plaintiffs. The order called for the revealing of all police personnel except informants.[1]

Judge James Montante certified the plaintiffs' proposed class on December 26, 1975 over opposition from both the City and the State.[2] The class of persons represented by plaintiffs was defined as all those persons or organizations who have been, are being, or will be unlawfully and/or illegally investigated by the Subversive Activities Unit of the Michigan State Police or the Detroit Police and who have been or will be injured pursuant to the grant of authority in the Michigan "speech crimes" statutes.

The right of the *class* to see its files has not been recognized by the court. Access, to date, has been granted only to the *named* plaintiffs. The decision on the right of the class members to see their files and the question of what deletions, if any, would be made is still pending.

On July 16, 1976, Judge Montante issued an order appointing attorney Arthur Tarnow as an interim monitor[3] with instructions to report back to the Court with specific recommendations for notifying members of the class, giving citizens access to political surveillance records. The monitor has recommended that all file subjects be notified by first class mail that they are subjects and that the subjects, once notified, should have access to their files. By contrast the State defendant wants to give only a general notice through a newspaper advertisement.

Partial Summary Judgment: Michigan Speech Crimes Unconstitutional

An order granting plaintiff's partial summary judgment was issued on June 9, 1976. Among other things, the order held that the Michigan "speech crimes" (discussed below) "are unconstitutional on their face in violation of the Michigan and United States Constitutions, and are null, unenforceable, and void *ab initio*,"[4] and "That any unit . . . which has or has had as all or part of its function the gathering . . . of information pursuant to the above cited statutes be dismantled to the extent of those functions."

Forty-five years after its enactment, Michigan's Criminal Syndicalism Statute, 1931 PA 328; MCLA 750.46-.48, was struck down. It is remarkable that the statute was challenged so rarely in the courts over the years and that it was never repealed in the legislature. It is also remarkable that, when it went down, it went down without lament and with little struggle and without any accompanying rationale for discarding so venerable a piece of legislation. True, the State defendant (as did the City) made a general denial of the allegation of unconstitutionality, but without supporting argument.

MCLA 750.46 defined "criminal syndicalism" as

> the doctrine which advocates crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political reform. The advocacy of such doctrine, whether by word of mouth or writing, is a felony . . . .

The goal commonly attributed to syndicalists was revolution, not reform.

MCLA 750.47 prescribed a penalty of up to ten years in prison and $5,000 fine for a variety of speech and assembly, and MCLA 750.48 penalizes the "display of a red flag in any public assembly, parade, or demonstration."

Also struck down as unconstitutional was 1950 Ex Sess PA 40; MCLA 28.51-.56, the Act most relevant to the suit, in that it established the State political intelligence apparatus. The Act authorized the commissioner (now director) of the state police

> to create a subversive activities investigation division within the . . . state police, and to define the powers and duties of this division and of . . . local police agencies in relation thereto . . . .

MCLA 28.52 defined the duties of the division to be

> to investigate activities within the state that are subversive of state or federal government, to obtain and compile information concerning such activities, to cooperate with military authorities . . . and . . . federal, state and local law enforcing and investigating agencies . . . .

MCLA 28.53 provided that

> "such files shall not be open for public inspection, *nor shall information contained therein be released:* Provided . . . the commissioner may furnish information to . . . law enforcement agencies or to the responsible *heads of any agency having charge of employment by the state* whom he considers proper to receive the same when, in his opinion, it is necessary to carry out the objectives of this act."[5] (emphasis added)

This Act also authorized a network of paid informers by allowing the director to employ

> "such persons outside of or within the department . . . as he may deem necessary . . . at such compensation as he may determine . . ."

The Court further declared facially unconstitutional 1950 Ex Sess PA 38; MCLA 752.311-.315 (sections on "Overthrow of Government") and 1950 Ex Sess PA 39; MCLA 30.101-.105 (sections on "State Security" including an appropriation for a "security investigation division" in the State Police). The Court likewise held 1952 PA 117; MCLA 752.321-.332, as amended (the

"Communist Control Law") to be unconstitutional. MCLA 752.321 is still on the books even though the Michigan Supreme Court held it unconstitutional as long ago as 1956.

The plaintiffs contended that the investigations and surveillances violated amendments 1, 4, 5, 6, 9, and 14 to the United States Constitution and violated rights "under the State of Michigan Constitution." The contention was that the police activity was conducted "primarily to deter, chill, intimidate, hinder, and penalize" the expression of "unpopular or dissident political, social, economic, religious or social views about issues of public concern." They further contended that the activity was "conducted pursuant to an illegal and unconstitutional grant of authority," namely that given the State Police by PA 40.

One possible effect of PA 40, and of political surveillance in general with or without statutory authority, is the stimulation of self-censorship, or the "chilling effect." It is possible to conclude that self-censorship was the governmental and police *intent* as well as the effect; the Act would therefore be unconstitutional on its face, and not just unconstitutional as applied to particular plaintiffs, because the effect would be an abridgement of the freedom of speech guaranteed by the first amendment.

All persons were put on notice by PA 40 that "confidential files" would be maintained on them if they engaged in political activities which were "subversive" — but which were not criminal under any laws which could pass constitutional muster. That alone is a threat since citizens are not completely informed what, if any, use will or might be made of such files. The Head of the State Police may, for instance, give information in the files to agencies "having charge of employment by the State," which is a direct threat to the livelihoods of politically active people. There are also indications that this kind of political surveillance bleeds over into the private sector; depositions have revealed for instance that the Chrysler Corporation has its own set of political files on "activists" in its plants and that many Chrysler Corporation security personnel are former Detroit police officers. The price of certain political speech thus becomes at least the risk of employment and the risk of governmental monitoring of such speech.

What is it that provoke such penalties? "Subversive activities." And what are they? "Criminal syndicalism." And what is that? "The doctrine which advocates . . . violence" to achieve "political reform." Clearly, the statute punishes mere advocacy and could not survive the rule in *Brandenburg* v *Ohio*[6] which requires that the proscribed advocacy be likely to produce *imminent* lawless action. Likewise, the "red flag" section of PA 328 runs afoul of *Stromberg* v *California*[7] which held a similar law to be too vague. The flag might not be an "emblem of anarchy" but of peaceful opposition to government, wrote the high court. (Under *Brandenberg* it would not matter even if it were an anarchy emblem.)

It can be concluded that the allegations of constitutional violations were sufficiently grounded in law to support the decisions rendered. The court found that the police agencies undertook surveillance and infiltration and record-keeping on persons and groups engaged in *lawful* political activity. The *police* acts, under the stricken statutes, were found to be *unlawful*.

Common Law Political Surveillance

The partial summary judgment order did not address plaintiffs' demand for a declaration of unconstitutionality on the City's claimed common law political surveillance mandate. Unlike the State political intelligence arm, the City intelligence arm was *not* ordered disbanded; Judge Montante ordered the dismantling of the units acting *pursuant to* the stricken *statutes*. The City claims that its political intelligence authority does *not* derive from those statutes. The City could maintain its "subversive" unit *and* continue to do political surveillance. The State could, theoretically, set up a new unit, claim a common law political surveillance power and do just what it has been doing — as long as it does not claim statutory authority.

FOOTNOTES

1. An interesting and important question arises: What are informants? Are they independent contractors, police personnel or hybrids? The point has not been argued.

2. The State expressed concern over the "nature of the material which may be discovered should this case explode into a class action," and was particularly concerned over the safety of its informers. It should be noted that the surveillance subjects were engaged in *legal* activities and that the State Police have been held to be acting *illegally*. Viewed from that perspective, the State's claimed concern over the safety of its informers rings hollow.

3. As far as can be ascertained, the appointment of a monitor is a trailblazing act.

4. The "void *ab initio*" declaration is important in that it preserved the issue for damage claims dating back to 1950, the enactment date, rather than to June 9, 1976, the date of the order, should damages be sought in separate actions.

5. Governor William Milliken, in a letter of March 9, 1976, to Judge Montante, which was the Governor's way of answering plaintiffs' interrogatories, stated that "there were occasions in the past when information from Article 40 files was shared with *private* corporations requesting reference information for employment purposes." (Emphasis added). This is an admission of violations of the statute. (Query: what is the consequence of violating a law which itself has been declared unconstitutional *ab initio?*) The Governor further wrote that the State Police has "conducted surveillance activities on organizations registered as political parties . . . "

6. 395 US 444 (1969).

7. 283 US 359 (1931).

8. Mayor Coleman Young, in a meeting with *Benkert* counsel, stated that he would order the police "not to conduct political surveillance on any citizens." *Benkert* counsel assume that the order was given. Their concern is that the police may be defining for themselves what is and is not "political."

Lawsuits Against Federal, State and Local Red Squads: A Docket of Cases

Alliance to End Repression, et al v. Rochford, et al., No. 74 C 3268 (N.D. Ill., E. Div.). Suit for declaratory relief, injunctive relief, and damages alleging widespread illegal activity by Chicago Police Department, including intimidation, surveillance, police harassment, and wiretapping against citizens engaged in legally protected political activities. The suit has survived a motion to dismiss, and the class has been certified. Court has restricted public dissemination of discovered information on the operation of the police intelligence system. Court has also ruled that defendants may not claim informer's privilege to delete names of undercover agents who reported on plaintiffs' non-criminal activities. Court has further ordered that where defendants, in anticipation of this suit, destroyed documents regarding certain allegations in the complaint, those allegations are deemed to be admitted *prima facie*, and defendants have the burden of rebutting them. Plaintiffs also demonstrated that defendants had infiltrated plaintiffs' legal team, and the court enjoined any further infiltration as well as the use of any previously gathered information. Attorney: Robert C. Howard, Suite 1118, 306 N. Michigan Ave., Chicago, IL 60601, (312) 641-1181.

Anderson v. Nixon et al., Civ. No. 76-1794 (D.D.C.). Columnist Jack Anderson alleges that officials of the Nixon administration directed undercover operations against him and his associates in order to disrupt and discredit their reporting and to learn their sources of information. Attorney: William A. Dobrovir, 2005 L St. NW, Washington, DC 20036, (202) 785-8919.

Benkert v. Michigan State Police, No. 74-0230934 (Wayne Cty. Cir. Ct.) This case was filed following disclosures that the Michigan state police had investigated a consumer group which had been active in lobbying the state legislature. Subsequent discovery revealed that the state police have collected files on some 50,000 Michigan groups and citizens, and the suit was amended to include additional plaintiffs. Class certification has been granted and a monitor appointed to supervise notification. Additional discovery further revealed that the police have given information to private corporations and that some workers were harassed and fired as a result. The court has ruled that the statutes which defendants claimed authorized their activities are unconstitutional. Although the court has restricted public disclosure of discovered information, it has also authorized plaintiffs to take depositions on tape recorders. Discovery is continuing. Attorney: George Corsetti, Michigan Legal Services, 900 Michigan Building, 220 Bayley Ave., Detroit, MI 48226, (313) 964-4130.

Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144 (1975), *appeal pending*, No. 76-1647 (D. C. Cir.) Suit for damages, declaratory and injunctive relief arising out of Army intelligence wiretapping and surveillance of American civilians in Germany working in the McGovern campaign in 1972, as well as civilian lawyers working with the Lawyers Military Defense Committee in Heidelberg. Army admitted that it "misrepresented" the facts to the court by initially denying or evading many of plaintiffs' allegations. Discovery proceedings revealed that Army had inserted undercover agent into LMDC offices and otherwise continued to conduct surveillance of plaintiffs for more than a year after suit was filed. District Court held that, absent exigent circumstances, the Fourth Amendment requires a warrant for wiretapping of American citizens or organizations overseas when there is no evidence of collaboration with a foreign power. Court also held that plaintiffs' allegations of disruption of their activities, illegal wiretapping, abusive dissemination of information, and use of infiltrators made out a cause of action under the First Amendment. Plaintiffs contend that the district court's ruling is not final and seek further discovery. Defendants argue on appeal that they are entitled to absolute immunity. Attorney: John Shattuck, ACLU Washington Office, 410 First St. SE, Washington, DC 20003, (202) 544-1681.

Bohmer v. Nixon, No. 75-4-T (S.D. Cal.). Plaintiff alleges illegal surveillance by FBI, CIA, and the San Diego police at the time of planning for the 1972 Republican convention. Motion to dismiss Richard Nixon as defendant has been granted. Attorney: Peter Young, 47 Park Ave., Venice, CA 90291, (213) 339-5194.

Black Panther Party v. Levi, No. 76-2205 (D. D. C.). Plaintiffs allege that the FBI and other government agencies conducted warrantless wiretaps, mail intercepts, harassment, and burglaries, provoked violent confrontations which in some instances resulted in deaths, and employed undercover agents to encourage violence and otherwise disrupt plaintiffs' activities. Suit

A Docket of Red Squad Cases, *continued*

seeks damages and declaratory and injunctive relief. Attorney: Fred Hiestand, Suite 217, Claremont Hotel, Ashby & Domingo Avenues, Berkeley, CA 94705, (415) 849-4041.

Burkhart v. Saxbe, Civ. No. 74-826 (E. D. Pa.) and Forsyth v. Kleindienst, Civ. No. 72-1920 (E. D. Pa.). Plaintiffs were overheard on a warrantless national security wiretap and seek damages. Courts have authorized discovery under protective orders. Cross motions for summary judgment are pending. Attorney: David Rudovsky, 1427 Walnut Street, Philadelphia, PA 19102 (215) LO 3-0312.

Clavir v. Levi, 76 Civ. 1071 (S.D.N.Y.). FBI has admitted that it placed bugging devices on plaintiff's car and in her house. Discovery is continuing. Attorney: Paul Chevigny, New York Civil Liberties Union, 84 Fifth Ave., New York, NY 10011, (212) 924-7800.

Fonda v. Gray, (C.D. Cal.). Suit seeks injunctive and declaratory relief and damages against officials of the Nixon administration for ordering FBI agents and other persons to unlawfully inspect plaintiff's bank records, burglarize her car, seize her baggage and other personal belongings, and conduct continuous surveillance in order to smear her reputation and destroy her credibility as an anti-war activist. Discovery has established many of the allegations in the complaint and is continuing. Attorney: Mark Rosenblum, Southern California Civil Liberties Union, 633 South Shatto Place, Los Angeles, CA 90005 (213) 487-1720.

Freedom Press v. Rizzo, Civ. No. 70-3175 (E.D. Pa.). Plaintiffs allege that local police interfered with distribution of newspaper, illegally entered homes, conducted illegal surveillance, and harassed plaintiffs. Case has been settled through a consent decree, whereby defendant agreed not to engage in the alleged activities. Attorney: David Kairys, 1427 Walnut St., Philadelphia, PA 19102 (215) LO 3-7312.

Greater Houston ACLU, et al. v. Welch, et al., 74-H-59 (S.D. Tex.). Suit against Houston Police Department for gathering, maintaining, and disseminating information on more than 1000 politically active Houston citizens. The complaint includes wiretap allegations. The district court denied class certification, and the Fifth Circuit declined to hear an interlocutory appeal. In the meantime, 150 individuals have moved to intervene, and these motions are pending. The courst has taken custody of the police files. Discovery has been limited to documents in these files concerning the named plaintiffs, including the membership of the Houston ACLU. The court has recently authorized depositions of police officials who were responsible for the files. Attorneys: Carol and Stuart Nelkin, 5417 Chaucer, Houston, TX 77005 (713) 526-4500.

Hampton v. Hanrahan, No. 70 C 1384 (N.D. Ill.). Suit for damages against local, state and federal officials by survivors of two Black Panther Party leaders who were shot to death when police raided their apartment. Discovery has revealed extensive FBI involvement in operations leading to Hampton's death as well as misrepresentations by other defendants. Discovery is continuing with some restrictions placed on public dissemination. Attorney: Herbert O. Reid, 110 South Dearborn, Chicago, IL 60603, (312) 236-3504.

Handschu v. Murphy, 349 F. Supp. 766 (S.D.N.Y. 1973). Suit challenges undercover operations of the Bureau of Special Services of the NYC police department. Plaintiffs seek declaratory and injunctive relief enjoining all surveillance activities of the Bureau having no reasonable relationship to any law enforcement purpose. Case has survived a motion to dismiss in a reported opinion. Police Commissioner's affidavit in support of the motion admits many of plaintiffs' allegations. Discovery is continuing. Attorney: Paul Chevigny, New York Civil Liberties Union, 84 Fifth Ave., New York, NY 10011 (212) 924-7800.

Hobson v. Wilson, No. 76-1326 (D.D.C.). Persons active in District of Columbia political affairs allege that the Metropolitan Police and FBI conducted electronic and physical surveillance, surreptitious entries, and mail intercepts, and employed undercover agents to disrupt plaintiffs' meetings and plans. Plaintiffs seek declaratory and injunctive relief and damages. Attorney: David Rein, 400 Woodward Building, 735 19th St. NW, Washington, DC 20005, (202) 628-4047.

Institute for Policy Studies v. Mitchell, Civ. No. 74-316 (D.D.C.). Suit alleges illegal wiretapping, mail openings, use of informants, theft by informants, breaking and entering, and disruptive operations by both federal and District of Columbia officials. Discovery is proceeding under an order restricting public dissemination. Attorneys: David Rudovsky, 1427 Walnut St., Philadelphia, PA (215) LO 3-0312); Jerry Berman and Robert Borosage, 122 Maryland Ave. NE, Washington, DC 20002 (202) 544-5380.

Jabara v. Kelly, Civ. No. 39065 (E.D. Mich.). Plaintiff, who is president of Arab-American University Graduates, seeks declaratory and injunctive relief and damages against FBI for wiretapping and sending derogatory data about him to other government agencies, Jewish organizations in the U.S., and to Israeli intelligence agencies. Opinion reported at 62 F.R.D. 424 evaluates government's claim of privilege to resist plaintiff's interrogatories. Further discovery motions are pending. Attorney: John Shattuck, ACLU Washington Office, 410 First St. SE, Washington, DC 20003 (202) 544-1681.

John Doe, et al. v. Schneider, et al., 75-38-C6 (D.C. Kan.). Kansas Bureau of Investigation has been collecting dossiers on private citizens for a number of years. Suit asks that persons named in files be notified by court so that they can pursue possible legal remedies for invasion of privacy. Defendants' motion to dismiss and plaintiffs' motion to compel discovery are pending. Attorney: Terry Watson, P. O. Box 1453, Topeka, Kansas 66601, (913) 233-2323; Kansas Civil Liberties Union.

Kendrick v. Chandler, Civ. No. 76-449 (W.D. Tenn.). Suit seeks declaratory and injunctive relief and monetary damages for the activities of the Memphis Police Department's Domestic Intelligence Unit. Three days before the suit was filed, the mayor ordered the unit's files to be

destroyed. The court issued a temporary restraining order to protect the records, but the destruction allegedly was accomplished before the court's order reached the police. Discovery is underway. Attorney: Jack Novik, ACLU National Office, 22 East 20th St., New York, NY 10016, (212) 725-1222.

Kent State V.V.A.W. v. Fyke, No. 72-1271 (N.D. Ohio). Suit for damages and declaratory and injunctive relief against Kent State University for employing undercover campus police informant who attempted to induce plaintiffs to purchase weapons from him to blow up campus buildings. Settlement negotiations are underway. Attorney: Clyde Ellis, Ohio Civil Liberties Union, 203 East Broad St., Columbus, OH 43215.

Kenyatta v. Gray, 71 Civ. 2595 (E.D. Pa.). Suit seeks declaratory and injunctive relief on behalf of all individuals who were targets of the FBI's Black and New Left COINTELPRO operations. Discovery of FBI documents has revealed that FBI agents, acting on instructions from J. Edgar Hoover, were responsible for anonymous threatening letters sent to plaintiff Kenyatta in 1968 while he was active in civil rights work in Mississippi. Plaintiffs' motion for class certification and defendants' motion to dismiss for lack of jurisdiction and improper venue are pending. Attorneys: David Rudovsky, 1427 Walnut St., Philadelphia, PA, (215) LO 3-8312; Jack D. Novik, ACLU National Office, 22 East 40th St., New York, NY 10016 (212) 725-1222.

Kinoy v. Mitchell, 67 F.R.D. 1 (S.D.N.Y. 1975). Wiretap suit for damages brought by civil rights attorney. Early decision established standing of person overheard on warrantless wiretap to bring civil action for damages under 18 U.S.C. §2520 even when not a subscriber to the tapped phone on which his conversation was overheard. Government admitted overhearing plaintiff on 23 occasions over a 15 year period, including conversations of his clients. Reported decision establishes procedures which government must follow in asserting state secrets privilege. Discovery is continuing. Attorney: Rhonda Copelon, Center for Constitutional Rights, 853 Broadway, New York, NY 10003, (212) 674-3303.

Martin v. Los Angeles Community College District, C 25402 (Sup. Ct., Los Angeles County). Suit seeks declaratory and injunctive relief and money damages for violations of state wiretapping and eavesdropping statutes. Plaintiffs are black students and faculty whose meetings were recorded by the campus police who acted under the instruction of the college administration. A trial is expected this spring. Attorney: Jill Jakes, Southern California Civil Liberties Union, 633 S. Shatto Place, Los Angeles, CA 90005, (213) 487-1720.

Philadelphia Resistance v. Mitchell, Civ. No. 71-1736 (E.D. Pa.). Plaintiffs were subjected to physical and electronic surveillance and harassment following the burglary of the FBI office in Media, PA. Suit sought declaratory and injunctive relief and money damages. Case has been settled through a consent decree under which defendants agreed to pay plaintiffs' litigation costs and not to conduct any surveillance or harassment of plaintiffs. Attorney: David Rudovsky, 1427 Walnut St., Philadelphia, PA, 19102. (215) LO 3-8312.

Philadelphia Yearly Meeting v. Tate, Civ. No. 71-849 (E.D. Pa.). Plaintiffs sought declaratory and injunctive relief and damages with respect to (1) police photographing and data gathering at demonstrations and other public meetings, (2) maintenance of intelligence files unrelated to criminal activity, (3) dissemination of these intelligence files to other law enforcement agencies, other government agencies, and to non-government organizations, and (4) public disclosure by police on television of certain individuals and organizations on whom files were kept. The district court dismissed the complaint. On appeal the Third Circuit affirmed the dismissal with respect to photographing and data gathering at demonstrations and dissemination to other law enforcement agencies. The Court of Appeals reversed and remanded with respect to dissemination unrelated to law enforcement and the television disclosures. 519 F.2nd 1335. On remand, defendants agreed to pay damages and to enter into a consent decree barring any further such dissemination or disclosures. Attorney: David Rudovsky, 1427 Walnut St., Philadelphia, PA. 19102 (215) LO 3-8312.

Ritchings v. Valenti, et al., No. C-3504-73, Appeal No. A-4063-75. App. Div., N.J. Superior Ct., Ocean County. Damage action against members of the Point Pleasant Police Dept. and the Mayor for alleged electronic surveillance of former Republican Party Chairman's home. Trial court held that the interceptions were legal under the state wiretap statute. The appeal is under submission. Attorney: Richard Sacks, Lakewood Plaza, Kennedy Plaza, Lakewood, NJ 08701, (201) 363-5858.

Sckorohod v. Stafford, No. 359897 (St. Louis County Court). Suit challenges police photographing and videotaping of a lawful and orderly demonstration. Complaint dismissed without opinion. Case has been submitted to St. Louis County Court of Appeals. Attorney: Francis L. Ruppert, 111 S. Meramec, Suite 420, Clayton, MO., (314) 721-4333.

Teague v. Alexander, Civ. No. 75-0416 (D.D.C.). Class action by persons who were audited or otherwise investigated by the IRS's Special Services Division because of their controversial views or action. Motion to dismiss is pending. Attorney: Alan Levine, New York Civil Liberties Union, 84 Fifth Ave., New York, NY 10011, (212) 924-7800.

White v. Davis, 13 Cal. 3d 757 (1975) Suit challenged use of undercover police agents as students in classes and other campus activities. Trial court dismissed, and California Supreme Court reversed, holding that such surveillance, absent any connection with illegal activities, is an unlawful restraint of free speech. Attorney: Fred Okrand, Southern California Civil Liberties Union, 633 South Shatto Place, Los Angeles, CA 90005, (213) 487-1720.

In The News

December 11, 1976 Sources familiar with the investigation into illegal FBI wiretapping directed against the Black Panther Party and the Weather Underground revealed that some 20 FBI agents were subpoenaed to testify before a federal grand jury. *Sources also suggested that the 6-*month investigation into FBI-COINTELPRO-related activities may produce indictments before the Ford Administration leaves office. *(New York Times, 12/12/76, p. 30)*

December 12, 1976 Reliable sources have revealed that the CIA has been bugging the representatives of Micronesia in their negotiations for independence from the United States. The State Department, which is offering the Micronesians U.S. citizenship, has objected because the CIA is prohibited from conducting surveillance on Americans. The White House made no comment on the matter and referred it to the Justice Department for a legal opinion. *Washington Post, 12/12/76, p. A1)*

December 16, *1976* Senators Humphrey, Kennedy, and Mathias wrote a letter to Sen. Daniel Inouye, Chairman of the newly established Senate Oversight Committee on Intelligence, urging him to begin an investigation into "activities of foreign intelligence agencies in the United States, including the apparent cooperation of the CIA." The letter cited the activities of the South Korean CIA, the Iranian SAVAK, and particularly the Chilean DINA, which has been implicated in the murder of Orlando Letelier and Ronni Karpen Moffitt in Washington last September. *Washington Post, 12/7/76, p. A9)*

December 23, 1976 A federal grand jury is investigating allegations that in 1973 ITT and the CIA conspired to fabricate and coordinate their testimony before the Multinational Corporations Subcommittee of the Senate Foreign Relations Committee, which was then investigating ITT's role in the overthrow of the Allende government of Chile. At that time, ITT officials testified that it had not been involved in Chilean politics; the Senate Intelligence Committee, however, has since determined that ITT, following CIA advice, contributed at least $350,000 to one of Allende's political opponents in the 1970 presidential campaign. The investigation is apparently focusing on former Director of Central Intelligence Richard Helms, ITT President Harold S. Geneen, and ITT Board Member John A. McCone, who was DCI from 1961-1965. *(New York Times, 12/23/76, p. 1)*

In The Literature

"America's Secret Police Network," by George O'Toole, *Penthouse*, November 1976, p. 77. Describes the virtually unknown Law Enforcement Intelligence Unit (LEIU) which serves as a clearinghouse for transferring political intelligence information from one police "red squad" unit to another throughout the U.S. and Canada. Although its members are law enforcement officials, LEIU maintains that it is a private organization and that its records and activities are therefore not subject to any of the controls which are placed on federal, state, and local government agencies.

"The Global Assassins: How the CIA Defused the Bombing of Orlando Letelier," by Mary Shivanandan and Montague Kern, *Rolling Stone*, Dec. 2, 1976, p. 41. Chronicle of the efforts of the CIA and the Chilean junta to deflect the investigation away from the DINA, the Chilean intelligence arm.

"Inside a 147-Page Dossier: An FBI 'This Is Your Life,' " by David Braaten, *Washington Star*, Dec. 13, 1976, p. A1. Released as a result of a Freedom of Information Act request, Charlotte Levin received a lengthy file which first detailed a security clearance investigation in which she was described as a model citizen, and then a far more extensive and negative record of the FBI surveillance of her legal political activities as a JDL member.

In The Courts

May 10, 1976 *Bachrack v. CIA*, No. CV 75-3727-WPG (C.D. Cal.) A Freedom of Information Act suit seeking records on the relationship of Nicholas De Rochefort, deceased, to the CIA and the OSS was dismissed by Judge William P. Gray. The court upheld the CIA's refusal to confirm or deny the existence of such records under the (b) (3) exemption and 50 U.S.C. §§403g and 403(d)(3), and found it unnecessary to consider whether such documents could be properly withheld under the (b)(1) exemption for classified information.

October 18, 1976 *Hayden v. CIA*, Civil Action No. 76-284 (D.D.C.) In a Freedom of Information Act suit for deletions from the files on activist Tom Hayden, Judge Thomas A. Flannery held [in an order which was handed down before the decision in *Phillippi v. CIA*, Civil Action No. 76-1004 (D.D.C. Nov. 16, 1976)] that exemption (b)(3) granted the CIA broad authority under 50 U.S.C. §403(d)(3) and §403g to withhold information. However, since the Act intended to place the burden of proof on the government it is nevertheless necessary for the court to conduct in camera inspection of the documents withheld under (b)(3) and other FOIA exemptions where affidavits in support of withholding are not convincing.

October 29, 1976 *Fitzgibbon v. CIA*, Civil Action No. 76-700 (D.D.C. Memorandum and Order). In a Freedom of Information Act case for a waiver of fees for documents relating to the murder of Jesus de Galindez by agents of Trujillo, Judge Aubrey E. Robinson, Jr. 1) denied the government's motion to dismiss, and 2) denied the plaintiff's motion to compel discovery of all CIA correspondence concerning granting or denying a waiver of fees. The court held that while the denial of fee waivers for material "primarily benefitting the general public" is reviewable by the courts, the granting of such waivers is discretionary and therefore past decisions of an agency are not relevant.

December 1, 1976 *Black Panther Party v. Levi* Civil Action No. 76-2205 (D.D.C.). Class action for declaratory and injunctive relief and for money damages filed on behalf of the Black Panther Party, present and past members of the party, and supporters of the party against numerous federal intelligence agencies and officials of the agencies. The complaint alleges a concerted plan to destroy the Black Panther Party by using illegal methods ranging from assassination to bugging and burglary.

December 13, 1976 *Alliance to End Repression v. Rochford*, Civil Action No. 74 C 3268 (N.D. Ill.) In a Chicago red squad suit, the City of Chicago filed a notice of appeal of a court order enjoining infiltration of the Alliance legal team or use of information gained by prior infiltration of the legal team.

December 16, 1976 *Halperin v. Kissinger*, Civil Action No. 1187-73 (D.D.C.). In a suit for damages for a twenty-one month wiretap, Judge John Lewis Smith held that Richard Nixon, John Mitchell, and H.R. Haldeman were liable for damages. The court noted that even assuming *arguendo that warrants* are not required for some national security surveillances "there can be no serious contention that the Fourth Amendment's independent requirement of reasonableness is suspended in the area of national security searches and seizures." The wiretap lacked temporal and spatial limitation and hence represents the "antithesis of the 'particular, precise, and discriminate' procedure required by the Supreme Court in numerous Fourth Amendment cases." A former President and Attorney General, like any other citizen, is charged with knowledge of established law and must be held accountable for personal misconduct. The court dealt with a separate motion to dismiss the complaint against the former President in a footnote which noted that "numerous recent decisions indicate that government officials are not immune from suit for alleged illegalities committed in office."

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Point Of View

(continued from page 16)

tics make them uneasy. Their main source of information is informers, who pretend to be members of lawful political organizations, but in fact report everything they learn and often promote violence and other illegal acts.

Information from these agents is supplied to the FBI, which then promotes the most effective agents on to the FBI pay-roll.

As the FBI domestic intelligence operations have come under increasingly skeptical scrutiny by congressional committees, Bureau field offices have increasingly turned to red squads to conduct investigations.

For this reason any campaign to end government spying must operate on the local and state, as well as the national level. Litigation, like that described in this issue, must be filed in cities throughout the country. Only through the documentation which such cases yield can we get an adequate picture of the ways these squads operate and share information with the FBI and with each other through the Law Enforcement Intelligence Unit. The latter purports to be a "private" association of police officers who share information. The known activities of this organization are reported in a recent article in *Penthouse* magazine noted in the "In the Literature" column.

Such suits also serve to alert community political leaders to the fact that surveillence is not limited to enemies of Richard Nixon or to those who operate on the national level. We know that in Chicago every progressive political group and many firmly in the middle of the political spectrum, were infiltrated, surveilled, and manipulated. There is every reason to think that the same is true in many other cities.

It would be naive in the extreme to believe that this intelligence community could be abolished or even forced to focus on those who are in fact plotting to violate the criminal laws of the land. What we can hope to do is to capitalize on the unique exposure into the operations of the community that we have been given to reduce their scope of operation, their freedom to spy and manipulate, and the cost to them of doing so. Success would mean substantially fewer informants in political groups, less information in intelligence agency dossiers, and less secret manipulation of the political process.

There is an opportunity now to pass the local, state, and federal laws to restrict the scope of political surveillance, to abolish the red squads, and to establish legal and political oversight mechanisms. If that is not done we can expect the surveillance of Americans protesting their governments actions to return in full bloom when we next move into a period of major dissent. But the recent revelations would make a difference—the agencies would no longer maintain the paper trail which they are now being forced to disgorge and which creates the possibility of holding them accountable. □

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Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.

JAMES MADISON TO THOMAS JEFFERSON, MAY 13, 1798

Point
Of View

The Intelligence Community

BY MORTON H. HALPERIN

Through the litigation described in this issue of *First Principles* and from other information wrenched from the government we are beginning to learn about many parts of the intelligence "community" which systematically gathers information on the political beliefs and activities of Americans and then uses that information to disrupt lawful political activities. The federal intelligence agencies are not content to act on their own or even just in cooperation with each other; rather they reach out in every possible direction for additional manpower.

Americans who venture abroad are, under the terms of the Ford executive order, fair game for the CIA if their conduct is believed by the executive branch to pose a threat to national security, but the CIA does not operate alone. It draws on the technical surveillance capabilities of NSA and of the local police of foreign countries. Local intelligence services in "friendly" countries are routinely asked to spy on Americans and to report their findings to the CIA and the FBI. The Immigration Service gets into the act when an individual enters or leaves the United States. Papers which would otherwise be protected by the First Amendment can then be seized.

Within the United States the FBI relies on the cooperation of the telephone company and other communications carriers and private organizations. We are just beginning to learn about the connections between the FBI and the intelligence sections of large corporations. Information passes back and forth and spying is done at the others' request. The IRS contributes information at its disposal.

The most extensive and long lasting connections are between the FBI and state and local red squads. These investigative units have paralleled the FBI in expanding the scope of their attention from alleged communists to all forms of political dissent. It appears that such units, working closely with the FBI and often under its supervision, have operated in every major city in the U.S.

Some have ceased to function or have gone underground, but many continue unabated. The method of operation of these units follows that of the FBI's domestic intelligence division. They spy on lawful political organizations whose poli-

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